

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Ralph Rodriguez, Din # 17A0928  
Plaintiff (Pro-Se)

PLAINTIFFS RESPONSE IN  
OPPOSITION TO  
DEFENDANTS  
"MOTION TO DISMISS"

-A G A I N S T-

No. 22-CV-02198(PMH)

Burnett Edward., et., al  
Defendants

RECEIVED  
SDNY PRO SE OFFICE  
2022 SEP 22 PM 3:15

PLEASE TAKE NOTICE, that upon the annexed affirmation of Ralph Rodriguez, Din # 17A0928, affirmed this September, 20, 2022, and upon the EXHIBITS attached thereto, the pleadings herein, Plaintiff will move this Court, before Honorable Philip M. Halpern, United States District Judge, for an order pursuant to Fed.R.Civ.P 6.1 and 6(d), and 12, to: Deny Defendants Motion to Dismiss because on August. 9, 2022, an Order to Serve and file Defendants Motion to Dismiss on September. 12, 2022, and to date, Plaintiff has not been provided with Defendants "Motion to Dismiss", and Plaintiff took into account the Fed.R.Civ.P 6(d), giving Defendants a three day Grace period for service by mail, and Still no "Motion To Dismiss", was provided to Plaintiff, wherefore, Plaintiff has Answered Defendants Letter Propose request in accordance with this Courts Individual Rules pursuant to Section 4(c), and if this Honorable Court Denies Plaintiff request to Deny Motion to Dismiss by Defendants, that it be taken into account that Plaintiff was only able to answer the "Motion To Dismiss", based on the Limited information Contained within the Letter request, and that No Prejudice be found for Defendants failure to serve the Pending Motion timely to Plaintiff.

Wherefore Plaintiff Declare Under Penalty Of Perjury that the Foregoing information is True and Correct.

*Dated. September. 20, 2022*

Respectfully Submitted By,

*Karl Rodriguez*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Ralph Rodriguez, Din # 17A0928.

Plaintiff

PLAINTIFFS AFFIRMATION IN  
SUPPORT OF OPPOSITION TO  
"MOTION TO DISMISS"

-A G A I N S T-

Burnett Edward., et., al.,  
Defendants

I, Ralph Rodriguez Din # 17A0928, affirm under penalty of perjury that:

1. I Ralph Rodriguez, am the Plaintiff in the above entitled action, and Respectfully move this Honorable Court to Issue an Order to "DENY" Defendants Motion to Dismiss.

2. The Reason why I am entitled to the Relief I seek is the Following (PLEASE SEE ATTACHMENT).

3. Wherefore, I Respectfully Request that this Honorable Court Grants this Motion, as Well as Any Further Relief Deemed Just and Proper.

I Declare Under Penalty Of Perjury that the Foregoing is True and Correct to the Best Of Plaintiffs Knowledge and Belief, Respectfully Submitted By,

Ralph Rodriguez

Dated. September. 20, 2022

1. When ruling on a Defendants Motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint, (*Erickson v. Pardus*, 551 U.S. 89, 94(2007)), and draw all reasonable inferences in favor of the plaintiff, (*Daniel v. T&M Prot.Res., Inc.*, 292 F.Supp 2d 302, 304 n.1 (S.D.N.Y. 2014))(Citing *Koch v. Christie's Int'l PLC*, 669 F.3d 141, 145 (2d Cir 2012)).

2. Additionally in adjudicating Rule 12(b)(6) motion, a District Court must confine its consideration to facts stated on the face of the complaint, in documents appended to the complaint or incorporated in the complaint by reference, and to matters of which judicial notice may be taken, (*Leonard E. v. Inc. Disc. Bank of N.Y* 199 F.3d 99, 107 (2d Cir 1999)), see also (*Wang v. Palmisano*, 157 F.Supp 3d 306, 317 (S.D.N.Y. 2016)).

3. However when the complaint is drafted by a Pro-Se plaintiff, the Court may consider "materials outside the complaint to the extent that they are consistent with the allegations in the complaint", (*Alsaifullah v. Furco*, No. 12-CV-2907, 2013 WL 3972614, at \*4 n.3 (S.D.N.Y. Aug.2,2013)), including "documents that a Pro-Se litigant attaches to his opposition papers, (*Agu v. Rhea*, No. 09-Cv-4732, 2010 WL 5186839, at \*4 n.6 (E.D.N.Y. Dec.15,2010)), statements by plaintiff "submitted in response to a defendants request for a pre-motion conference, (*Jones v. Fed. Bureau Of Prisons*, No. 11-CV-4733, 2013 WL 5300721, at \*2 (E.D.N.Y. Sep.19,2013)), and "documents that the plaintiff either possessed or knew about upon which they relied in bringing the suit, (*Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir 2000)).

4. Where as here, plaintiff proceeds Pro-Se, the Court must "construe the complaint "Libecally and Interpret", it to raise the strongest arguments that it suggest, (*Sykes v. Bank Of Am.*, 723 F.3d 399, 403 (2d Cir 2013)), and plaintiff must allege "only enough facts to state a claim to relief that is plausible on its face", and plaintiff included Detailed Facts, Sworn Affidavits, and Exhibits satisfying the requirements and obligations to provide more than "labels and Conclusions and a formulaic recitation of the elements of a cause of action", (*Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555

(2007).

5. Plaintiff has shown that defendants in the alleged Constitutional violation and personal involvement within the Rikers Island Prison System, *138* (2d Cir. 2012), and pleaded that each official defendant, through their own individual actions, has violated the Constitution (*Ashcroft v. Iqbal*, 556 U.S. 863, 873 (2009) *Iqbal*, 556 U.S. at 873), therefore plaintiffs had plausibly allege that the Rikers Defendants action fall into one of the five categories identified in (*Garrison v City Of New Haven*) *et al* (see (*Garrison v. City of New Haven*, No. 13-CV-1228, 2017 WL 321793 at \*4 (S.D.N.Y. Jan.22,2014)).

6. The Court may consider factual allegations raised for the first time in a Pro-Se plaintiff's opposition papers if they are plausible and consistent with the allegations in the complaint, (*Vlad-Barinuk v. NTA New York City Transit*, No. 14-CV-575, 2014 WL 5932923, at \*6 (S.D.N.Y. Dec.10,2014)).

7. Defendants were all on notice of the Constitutional violations also after being informed of the violations through a report or Appeal, and failed to remedy the wrongs (see (*Houston v. Capra* 2022 WL 748250 (S.D.N.Y March.11,2022)), where plaintiff argued the same Constitutional deprivation as claimant such as "Conditions Of Confinement", "Access to the Court", "Law Library Access", "Denial Of Sick Call", "Resuscitation", "Medical Treatment", "Deliberate Indifference to Serious Medical Need", "Rights Amendment Court and Unusual Punishment", against some of the same defendants as Claimant Sharon L. Dinkins, Akinola Ariyosabo, Davis, S. West, Edward Bernette, and was on full notice of their actions and failure to act.

8. Defendant was also on full notice that the Grievance System within Rikers Island Correctional was fully inadequate and corrupt creating a system that would not allow inmates to fully Exhaust Administrative remedies under the P.F.R.A, (see (*Alford v. Simon* on 2016 WL 1257272 (S.D.N.Y March.30,2016 case no. 12-CV-773) (*Thompson v. Booth* 2021 WL 913703, March.10,2021 16-CV-03477) (*Abdullah v. Ragano* 2013 WL 7113033 case no.

12-CV-8840(JPO) (O'Connor v. Featherston 2003 WL 554752 case no. 01-CV-3251(HB) (Shaw v. Ortiz 2016 WL 7410722 case no. 15-CV-3954(XMK)), proving that it has been a long practice of the Inmate Grievance within Fishkill to make grievances unavailable.

9. Defendants knew or should have known with multiple letters, grievances and being informed personally of the Constitutional violations of their subordinates, and was grossly negligent in supervising subordinates who committed the wrongful acts (Colon v. Coughlin, 58 F.3d 863, 873(2d Cir. 1995), and within the complaint there was enough information provided showing that Defendants "knew or should have known that there was a high degree of risk that these subordinates would behave inappropriately, but either deliberately or recklessly disregarded that risk by failing to take action that a reasonable supervisor would find necessary to prevent such a risk, and that failure caused a Constitutional injury to plaintiff, (Frederick v. Shoshan, No. 19-CV-5527, 2014 WL 3749537, at \*8 (W.D.N.Y. July.20,2014) (quoting Poe v. Leonard, 282 F.3d 123, 172 (2d Cir.2002)).

10. Defendants alleged that plaintiff had not stated that the defendant was not subjectively deliberately indifferent to an objective serious medical claim, and within claim it was clearly alleged that Defendants Sullivan and Akinyombo knew that claimant was disabled and was both informed that the deprivation of an Egg crate would cause and expose claimant to the unwanted infliction of cruel and unusual punishment and a severe deterioration of claimants medical condition, and was "Shown" a copy of claimants 1983 Rodriguez v City Of New York 15-CV-07945, and did nothing to assist claimant with his severe medical condition, and was directly responsible in failing to act and remedy a wrong.

11. Claimants disability and medical health is serious and without the proper medical care not only worsen claimants medical condition and health, but severely caused the mental stability of claimant to worsen, and their actions were intent after multiple letters were sent to there superiors complaining of there deliberate indifference to

OK. I repeat: while I am not and was informed by Sullivan "you can show willing compliance because you're not going to get an Egg Chair because I don't give out egg chairs."

Plausibly showing her actions were with notice and the defendants CLAIM that a nurse provide an extra padding within the facility, in "room" No. 52, Claimant used a mat from another cubical, and at no time did any nurse give Claimant an extra mat because only the Mrs Sullivan can provide an extra mat or egg seats, showing how Defendants failed to properly read complaint.

12. Defendant claims that defendant's actions or failure to act were not objectively substantiated independent to an objectively serious medical risk, vague allegations and state of medical treatment is also false See Exhibit A, showing a full medical description of defendant's medical condition, and severe nerve damage without proper medical care and information would not only worsen defendant's condition but cause future harm, and permanent damage, and to no way in factored in given medication but rather an and inhibitory medication not prescribed for severe nerve damage, and any such provider can attest to that, and any layperson to medical can confirm the medication and how it is used for, showing no need for a medical diagnosis by a professional to take that medication, but a request and or notice for one will be made if claim comes forward pending the patient's condition, within 24 hours we agree to those medical facts.

12. Nevertheless, a fair notice allegation that the group officers were not sufficient and should be dismissed is also false (see *Hanson v. Green*), where officers knew that to make an inmate carry dead bags in underweight of 50 pounds would cause injury, and within claim enough allegations was provided to show defendants acts were malicious, intent and in retaliation.

14. To establish the subject complaint, a plaintiff must show defendant acted with "malice in light of the judicial circumstances surrounding the challenged verdict," (*Weight v Good*, 574 P.2d at 233), and whether an action was "warranted" turned on whether it was "an abuse of discretion" and "unreasonable" in failing to serve a legitimate

"prological objective", and not to maliciously and constitutionally impermissible (Matthews v. U.S. Dep't of Corr. & Corr., Supervision, 2020 WL 1000347, at \*7 (D.C.M.D. Wash., 2020), such was the result of defendants' actions.

15. Claimant's secondly put to stand case forward that the will while in severe duress, and injured knowing to do so would cause harm with no legitimate prological objective, was done so with the threat of force is plausibly sufficient to meet defendants' actions and conduct violated contemporary standards of decency See e.g. (Matthews v. U.S. Dep't of Corr. & Corr., Supervision, 2020 WL 1000347, at \*7 (Excessive force claim when correctional officer with inmate balance on their hands on head and back for ten to fifteen minutes for no apparent reason).

16. Claimant's Resolution claim must also survive because claimant engaged in a Constitutionally protected activity, when challenges actions due to violation of constitutional protected rights by filing a Complaint, Grievance or Civil Rights lawsuit See (Saban v. Connolly, 794 F.3d at 204, and claimant going to medical after being physically assaulted, and writing a grievance right after the incident in details and specific, and Defendants' actions occurring shortly after was close in time to the protected activity to the adverse actions (Clark County Sch. Dist. v. Gordon, 337 U.S. 264, 273-74, 121 S.Ct. 1300, 149 F.Supp.2d 509 (2001).

17. Defendants' claim of Qualified Immunity also fails because their conduct violated clearly established statutory or Constitutional rights of which a reasonable person would have known (Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 386, 410 (1982), and at no time was it objectively reasonable for them to believe that their actions did not violate the law, or was the laws clearly not established at the time of the violations, especially with the years of experience they have working within the D.C.C.S.

18. Defendants' claim that the "State Law Claim", fails on jurisdictional grounds is also false, because a state law claim is 'supplemental', to a Federal Constitution or Statutory violation if it involves the same facts (28 U.S.C 1367 (2012), and a Federal

Court will consider a Supplemental State Law Claim if it is included in a complaint <sup>is</sup> a non-divisible Federal claim.

19. Defendants' actions, failure to act and malice impersonal conduct violated claimants Eighth Amendment Right to be free from Cruel and Unusual punishment and unwanted infliction of pain and suffering was clearly violated, (*Gordon v. McMillan*, 502 U.S. 1, 10, 712 S.Ct 985, 3000, 317 L.Ed.2d 556, 158 (1992) (*Chapman v. Amesbury*, 143 F.3d 698, 702, (2d Cir 1998).

20. Summary Judgment is appropriate only when the movant shows that "there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law (Fed.R.Civ.P.56(a) (*Prinoyan v. John Wiley & Sons, Inc.*, 743 F.3d 120, 123-24 (2d Cir 2014), and in "determining whether Summary Judgment is appropriate, a court must, consider the facts in the light most favorable to the non-moving party and resolve all ambiguity and draw all reasonable inferences against the movant (*Park v. Gays, Inc.*, 713 F.3d 156, 164 (2d Cir 2011).

21. Additionally it is the "movant's burden", to show that no genuine factual dispute exists (*Vt. Tally Bear Co. v. 1-800 Songman Co.* 373 F.3d 241, 244 (2d Cir 2004), and claimant has provided specific facts showing that there is a genuine issue for trial (*Reppel v. City of Wile*, 692 F.3d 27, 30 (2d Cir 2012).

22. The Second Circuit has instructed that when a court considers a motion for Summary Judgment "Special Solicitude" should be afforded to a Person Plaintiff (*Graham v. Lewinski*, 849 F.2d 342, 344 (2d Cir 1988),



Plaintiff's denial of a second mattress, because the mattress allegedly used was so damaged as to constitute an unconstitutional deprivation, and Defendant Sullivan and Officer Gibson were told and knew that plaintiff had a serious medical condition both prior and present that required the use of a second mattress. See *Walker v. Scholtz*, 717 F.3d 719, 725 (2d Cir. 2013).

23. Plaintiff had a serious medical condition requiring a non-standard bed to protect against further damage to his health, and Defendants knew or could have known while in custody of medical records on being told of the immediate need, having called for documentation of an injury to plaintiff's lumbar region of the spine, with suffering from "Bilateral Chronic Lower-back pain".

24. A request for a second mattress on May 19, 2015 was made to accommodate the condition, and the request was denied, see *Harris v. Wingo*, No. 15-CV-1503, 2015 WL 10427355, at \*4-4 (S.D.N.Y. Dec. 3, 2015).

25. Defendant Alexander Gibson, removal of plaintiff's mattress was intentional to cause severe pain and injury, that plaintiff's medical condition was severe and deprivation of his mattress was done so with malice, based on the fact that the log book which the defendant knew full well had happened to plaintiff there is also a list in the C.O.'s bible that lists all the inmates within the unit's program and medical conditions with documentation, and the defendant knew the number of the unit was plaintiff was Gibson and knew severe medical condition.

26. Officer Gibson's conduct violated clearly established statutory and constitutional law, which a reasonable person would have known, and the acts to deprive plaintiff of his mattress the cell knowing plaintiff had severe injury to the leg was done so in malice and with just cause, with the intention of causing pain and suffering which it did and with the medical condition severe.

27. Officer Gibson is not entitled to Qualified Immunity, etc.

negligence and failure to act would be in violation of clearly established law, and it is common for defendants to "do as they please", without the fear of punishment because the supervisors within the Facility rarely if ever reported officers for these actions, even when they were informed, personally, with reports and Supervisors had failed to discuss a wrong while being nothing, such as was the case with the Superintendent, Succot, Akinyeye, Frost, Gonzalez, Bayler, Woods, creating a culture of "turning a blind eye", to the negligence, wrong and being nothing to remedy problem brought forth by prisoners, for example multiple letters and grievances was submitted about Supervisors as reason for failing to process Grievances and failing to properly follow directives 4040, and 4041 and allowed for the "company's actions", to continue because she is the one that blocks prisoners attempts to grievance issues and knows full well that failure to grievance an issue would hinder an inmate claim for relief, being the "shield" to prison officials within Mitchell Correctional.

20. To argue that enough information was provided in regards to Officer Dinkins, plaintiffs attempt to get History, legal assistance and supplies from the law library which she refused to assist plaintiff was, thus as on a number of occasions but due to the searches done on plaintiffs criminal record, many of the dates were lost, but on August 21, 2022, she denied access to the court, as well as too late within August, which in July, and more information could be provided upon Discovery.

21. To argue that no defendant ever claim Security plaintiff can only on Court proceedings and appeals dealing with the same issues, against defendants and prior plaintiffs who moved forward with the same issue and no actions to remedy the wrong was done See *Rompage v. USA*, 16-CV-0777(PMH) 2021 WL 913706 (*Harrell v. New York State* 0.0.0.0 No. 18-CV-7333(RA) 2019 WL 3321322) (*Amara v. Simons*, No. 12-CV-7701(P) 2016 WL 1237372) (*Green v. Bai*, No. 9:19-cv-335(DMH/DJS) 2020 WL 1139354) (*Kendall v. Green*, No. 12-CV-3493(ATC)(RJC) 2013 WL 5425730) (*Green v. C.R.T.*, No. 22-CV-4631(CJ) 2022 WL 2162672), all of the undisciplined Civil Rights Violation cases were from Mitchell Correctional Facility, and the issues raised within them, were the same as plaintiff or closely related, and all involved action to Monitor, dealing with the Supervisors within

Miniball was at all times at risk of default due to its failure to pay its obligations and for the time to long continues to be done.

Ralph Rodriguez

Ralph Rodriguez

Dn # 17 A0928

Fishkill Correctional Facility

P.O. Box 307

Beacon, NY 12508

CC. sent to

Andrew Blencoe Attorney General

28 Liberty Street

New York, NY 10005

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKRalph Rodriguez(Pro-se Plaintiff) Dkt # 17A0928

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

7:22 Civ. 02198 (PMH)

- against -

Burnett Edward et.. Al.  
Defendants

## AFFIRMATION OF SERVICE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Ralph Rodriguez, declare under penalty of perjury that I have  
(name)served a copy of the attached Plaintiff Response in opposition to "Motion to dismiss"  
(document you are serving)upon Andrew Blumato Attorney General whose address is  
(name of person served)28 Liberty St. New York New York 10005  
(where you served document)by Mail within Fishkill Correctional  
(how you served document: For example - personal delivery, mail, overnight express, etc.)Dated: Dutchess, NY  
(town/city) (state)September 20, 2022  
(month) (day) (year)Ralph Rodriguez  
SignatureFishkill Correctional Facility  
AddressP.O. Box 307  
City, StateBeacon, New York 12508  
Zip Code

Telephone Number

Rado, give  
17 A0928  
// Correctional  
Box  
NY

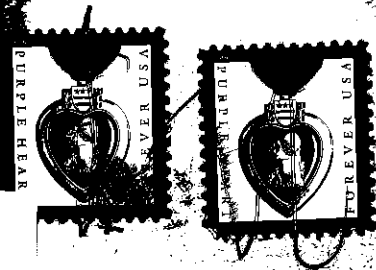
FISHKILL  
CORRECTIONAL  
FACILITY

neopost  
09/20/2022

US POSTAGE \$001.169



ZIP 12508  
041111251113



awt

rect

PMH)

